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IN THE STATE COURT OF CLARKE COUNTY

STATE OF GEORGIA

NICK STADDON and COX-STADDON
ENTERPRISES, INC. d/b/a RED HOUSE
MEDIA and d/b/a vbz.net
Plaintiff,

v.

THE RESDISTRIBUTION ALTERNATIVE
INC., WILLIARD DALE GRIEVER AND
NORMA LYNNE GRIEVER,
Defendants.

CASE NO. ST-05-CV-0049

ORDER

The above styled case having come before the Court for a non-jury trial on March 5, 2007, and the Court having considered the pleadings, testimony, evidence, and argument of the parties, the Court finds as follows:

Plaintiff filed suit in the State Court of Athens-Clarke County, seeking to recover from Defendants repayment of loans in excess of \$10,000.00, which Plaintiff made to Defendants between the years 1998 and 2004. Plaintiff also alleges that Defendants converted certain merchandise Plaintiff left in Defendants' home, and as such Plaintiff requests compensation for the value of said items.

Additionally, Plaintiff seeks to enforce a contract where Defendants were to lease a 1982 Mercedes Benz automobile from Plaintiff at the cost of \$100.00 per week from the time the agreement purportedly began in October of 2001 until Plaintiff took possession of the vehicle in January of 2004. Plaintiff seeks damages for non-payment of weekly payments on the vehicle rental. Plaintiff also seeks additional damages for the conversion and damage to the Mercedes Benz vehicle, and \$45 for a towing fee.

Further, Plaintiff seeks attorney's fees incurred as a result of this lawsuit, pre-judgment interest of 7 percent from the demand letter on October 13, 2004 until the date of judgment, and post-judgment interest of the legal rate.

Defendants filed a counterclaim contending that Plaintiff has been unjustly enriched as a result of labor, services and intellectual property supplied by Defendants. Defendants seek damages in an amount not less than \$50,000 in damages.

Defendants initially requested an injunction against Plaintiff to prohibit Plaintiff from using the internet store vbz.net, but withdrew this request on the grounds that State Court does not have equity jurisdiction.

I. Expenses

Plaintiff asserts that Defendants are liable for thousands of dollars in miscellaneous expenses (including but not limited to phone bills, toilet paper and meals). These expenses consisted of transactions where Plaintiff either paid on Defendants' behalf or where Defendants allegedly used Plaintiff's check card. With respect to the utility expenses, Plaintiff presented cancelled checks made out to Bell South and Jackson Hewitt, but presented no evidence verifying that these were Defendants' expenses rather than his own. With respect to the remaining expenses, the only evidence Plaintiff presented was a personal accounting record, which he testified he maintained over the years. Even though the Court received the Plaintiff's personal accounting record into evidence, the court is entitled to give this evidence only such weight and credit as it deems appropriate. The Court has no way to corroborate Plaintiff's personal accounting record which is a spreadsheet generated by the Plaintiff showing a list of expenses. Plaintiff presented no verifiable documentary evidence such as bank statements or receipts showing that the expenses actually existed, or that Defendants were liable for the

expenses. Therefore, the Court finds that Plaintiff cannot recover the miscellaneous expenses from Defendants because Plaintiff failed to present sufficient evidence of Defendants' liability for these expenses.

II. Loans

In contrast to the miscellaneous expenses, Plaintiff presented canceled checks to supplement his accounting in order to show proof of loans he allegedly made to Defendants. Plaintiff's accounting is verifiable only to the extent that he has provided specific canceled checks written by Plaintiff to Defendants' business or to the Defendants individually. Checks written from the Plaintiff or Red House Media to the Defendants or RDA demonstrate that Plaintiff loaned substantial amounts of money directly to Defendants during the time period addressed in the lawsuit.

A. Existence of a Contract

Under Georgia law, "to constitute a valid contract, there must be parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." O.C.G.A. §13-3-1 (2006). The canceled checks admitted into evidence demonstrate that Plaintiff loaned the Defendants in excess of \$10,000 from 2000 to 2003. In the "For" section of each check located in the lower left hand corner, the checks contain descriptions such as "loan" and "emergency loan." Additionally, Plaintiff testified that he loaned Defendants this money and that he expected to be repaid. Defendants conceded that Plaintiff did loan them money over the years but disputed how much they currently owe to Plaintiff. Thus, Defendants acknowledge both the existence of the loans and an obligation to repay the loans in some amount. The fact that Plaintiff lent the money to the Defendants with the expectation of being repaid, suggests the existence of a valid contract. See

Ades v. Werther, 256 Ga. App. 8, 10 (2002) (holding that where there was evidence that lender agreed to lend money with expectation of being repaid, there appeared to be contract and no basis for finding that no enforceable contract existed).

The lack of a writing does not defeat the existence of a valid contract for the loans because Plaintiff actually loaned money to the Defendants as evidenced by the canceled checks. In Georgia, certain kinds of contracts are required to be in writing in order to guard against fraud. See O.C.G.A. § 13-5-30 (2006) (“To make the following obligations binding on the promisor, the promise must be in writing and signed by the party to be charged therewith.”). The Statute of Frauds lists seven types of contracts that must be in writing in order to be enforceable. O.C.G.A. §§ 13-5-30(1) – (7) (2006). While a commitment to lend money falls squarely within the Statute of Frauds, this rule does not apply to money already lent. Ades, 256 Ga. App. at 10. Further, the Statute of Frauds does not extend to cases “where there has been such part performance of the contract as would render it a fraud of the party refusing to comply if the court did not compel performance.” Rose v. Cain, 247 Ga. App. 481, 484 (2001).

Although certain terms of the loan such as the interest rate and due date are missing and cannot be determined from the evidence, the loans are still enforceable. Even when the terms of an agreement are too indefinite to be enforceable, the agreement may later become enforceable by virtue of subsequent acts, words or conduct of the parties. Mills v. Barton, 205 Ga. App. 413 (1992) (holding an agreement enforceable where defendant accepted check from plaintiff in exchange for understanding that defendant would repay plaintiff when she was financially able).

Here, the checks written from Plaintiff to Defendants verify that Plaintiff, in fact, lent money to Defendants and that Defendants accepted the money. Based upon the canceled checks admitted into evidence, Plaintiff loaned Defendants \$10,601.63. Testimony from both parties

verifies that Defendants accepted the money with the understanding that they would repay the debt. The Court therefore finds that Plaintiff's loan of money in exchange for Defendants' promise to repay is an enforceable agreement. Therefore, Defendants are obligated to repay the outstanding loans.

B. Amount of Liability & Defendants' Counterclaim for Unjust Enrichment

The amount of Defendants' liability for the loans is based on the amount of the canceled checks offset by any amounts that Defendants have repaid on the loans. Plaintiff conceded that Defendants have paid back a portion of the loans. Plaintiff submitted into evidence deposit slips documenting the deposit of checks or cash from Defendants to Plaintiff. Plaintiff's submission of documentary evidence that reduces Defendants' total loan liability leads the court to draw an inference of trustworthiness as to Plaintiff and supports his credibility as to the existence of such loans.

Defendants assert that they owe less money than Plaintiff claims. Defendants allege that profits arising out of an alleged business agreement with Plaintiff should have been applied to the loans, thus reducing Defendants' overall liability. This alleged business agreement is also the basis for Defendants' counterclaim for damages. In their counterclaim, Defendants assert that because they never received profit payments resulting from the business agreement, Plaintiff was unjustly enriched. Because Defendants allege the same facts for both their defense on the loan obligation and their counterclaim, both issues are resolved together.

Because Defendants use a purported business agreement as the basis for their counterclaim, they have the burden of proof on the existence of such agreement. Defendants testified as to the existence of such an agreement and Plaintiff refuted its existence. Defendants presented minimal documentary evidence (Defendants' Exhibit 1) claiming to evidence the

profits of this business. Defendant's Exhibit 1 purports to document the percentage of Defendants' profits from the business and also includes an earlier version of Plaintiff's accounting than was admitted into evidence. Defendants presented no evidence to corroborate the contents of the exhibit. Similar to Plaintiff's accounting, this exhibit is just a spreadsheet claiming to report certain business profits. Additionally, the exhibit contains multiple versions of both Plaintiff's accounting and the alleged profits from the business, making the exhibit less factually reliable. Just as the Court found that Plaintiff's accounting was unreliable without further corroboration, the Court similarly finds that Defendants' Exhibit 1 is unreliable without any substantiating documentation. Even if the Court found Defendants' Exhibit 1 verifiable, the exhibit is incomprehensible, and provides the Court no useful information from which it could find that a business agreement existed.

Based on the documentary evidence and the testimony of both parties, this Court finds that Defendants' have not satisfied their burden of proof that an enforceable business agreement existed. Therefore, Defendants' counterclaim for unjust enrichment fails.

Further, because no business agreement exists between the parties, Defendants cannot show that profits from that business should have been applied to Plaintiff's outstanding loans to Defendants. Defendants did not present any additional evidence (such as canceled checks, deposit slips or an accounting) to show that they had repaid the loans. During trial, Defendants continually attributed this lack of documentation to the fact that Plaintiff never gave them any formal accountings. Even assuming this allegation is true, once Plaintiff established that Defendants are liable for the loans, it became Defendants' burden to prove that the loans have been repaid. Once Defendants were engaged in litigation, they could not rely on Plaintiff to provide information helpful to Defendants' case. Defendants' could have obtained supportive

documentation through the discovery process, or could have requested a court appointed accounting. Defendants did neither.

Because Defendants provided no reliable proof that they had paid any additional amounts to Plaintiff on the outstanding verifiable loans, Defendants owe Plaintiff the difference between the total amount of the loans, \$10,601.63, less \$5,069.44, which is the amount Defendants have paid back as documented by the deposit slips put into evidence by Plaintiff. The Court therefore finds that Defendants are liable to Plaintiff for the remainder of the outstanding loans in the amount of \$5,532.19.

III. Conversion of Merchandise

Plaintiff alleges that Defendants converted certain merchandise belonging to Plaintiff to their own use and possession. Plaintiff alleges that he left merchandise with Defendants, but that the merchandise is Plaintiff's property. Defendants refute this fact and assert that Plaintiff moved and left the merchandise at their residence for several years.

The Court finds that Plaintiff provided insufficient evidence to prove that he is the true owner of the merchandise in question. Further, even if certain described merchandise was Plaintiff's property at one point in time, Plaintiff has abandoned such property by leaving it at Defendants' residence for several years. Finally, an e-mail written by Plaintiff to Defendants and introduced into evidence by Plaintiff, proclaims explicitly that the merchandise in question is the property of RDA (The Redistribution Alternative), which is the Defendants' business.

The Court finds that Plaintiff's conversion claim fails, and that Plaintiff cannot recover damages related to the merchandise purportedly left at Defendants' residence.

IV. Mercedes Rental Agreement

A. Existence of a Contract

The Court next considers a purported oral agreement between Nick Staddon and Lynne Griever for the lease of a 1982 Mercedes Benz automobile. Neither party presented a written contract of the terms of any such lease agreement. Although Defendant Lynne Griever asserts that the Statute of Frauds bars this agreement from being an enforceable contract, the agreement to lease the Mercedes does not fall within the Statute of Frauds. Defendant Lynne Griever never specifically alleged which provision of the Statute makes the oral agreement to lease the Mercedes unenforceable. In looking at the Statute, the Court finds that subsection (5) is the only provision with possible application to the instant case. O.C.G.A. §13-5-30(5) states that the Statute of Frauds applies to “[a]ny agreement that is not to be performed within one year from the making thereof.” If the promise may possibly be performed within a year, it does not fall within the statute of frauds. Henry v. Blankenship, 275 Ga. App. 658, 661 (2005); Brown v. Little, 217 Ga. App. 632 (1995) (noting that mere possibility of performance within one year is sufficient to remove alleged oral contract from statute of frauds). Therefore, subsection (5) of the Statute of Frauds is not applicable here, because the lease of the Mercedes Benz vehicle could have been performed within one year. The fact that the rental of the Mercedes allegedly lasted longer than one year does not place the oral agreement within the Statute of Frauds. The Court therefore finds the existence of a valid oral contract by which Nick Staddon was to lease the Mercedes Benz vehicle to Lynne Griever.

B. Amount of Mercedes Rental

The next inquiry for the Court is to determine the terms of the Mercedes Benz vehicle rental lease contract. Based on the testimony of both Plaintiff and Defendant Lynne Griever, the

Court finds that the agreement began as an agreement to rent the Mercedes Benz vehicle for \$100.00 per week. Plaintiff Staddon alleges that this agreement never terminated, and that as long as Defendant Lynne Griever retained possession of the car, she was liable for the agreed upon rental payment each week for the use of the vehicle. Defendant Lynne Griever refutes this allegation, and contends that the rental term of \$100.00 per week was only to last for the months of November and December of 2001 while Defendant Lynne Griever was conducting specific business in Atlanta. Defendant Lynne Griever contends that the rental agreement converted into a mileage agreement at \$.10 per mile for the use of the vehicle after the first two months.

Plaintiff acknowledges that there was discussion of a possible mileage agreement and that he was amenable to a discussion of the issue. Plaintiff asserts, however, that the parties never agreed to a change based on a mileage payment agreement. In support of this contention, Plaintiff Staddon offered evidence of an e-mail from himself to Defendant Lynne Griever in which he proposed a mileage agreement. Plaintiff further asserts he received no response to his offer from Lynne Griever. Defendant Lynne Griever put forth no evidence that she accepted an mileage agreement offer based on Plaintiff's e-mail. Defendant Lynne Griever also failed to submit any evidence that she kept track of the mileage during her use of the vehicle. There was no evidence from either party to support that the \$100.00 per week agreement was converted to a mileage agreement. Thus, the Court thus finds that the Mercedes Benz vehicle rental agreement was for the amount of \$100.00 per week.

C. Duration of the Agreement

Plaintiff alleges that Defendant Lynne Griever had possession of the Mercedes from October 27, 2001 until January 9, 2004, and seeks rental compensation of \$100.00 per week for the entire period. Defendant Lynne Griever claims that the vehicle broke down soon after she

received it and she should not have to pay for the non-functioning automobile that Plaintiff refused to repair. Plaintiff Staddon testified that he moved to North Carolina in late 2002 or early 2003, and remembers the vehicle being parked in the Defendants' yard (not in use) for two or three months before he moved. Plaintiff also submitted into evidence an e-mail from July 2002 when Defendant Lynne Griever made an inquiry to Plaintiff as to how she could purchase the Mercedes Benz vehicle. The Court finds it unlikely that Defendant Lynne Griever would have been interested in purchasing an inoperable vehicle. Therefore, the best evidence suggests that as of July, 2002 the Mercedes Benz vehicle was operable and in use. Since neither party provided sufficient evidence as to the point in time the vehicle stopped functioning, the Court finds that, based upon the evidence and testimony presented, the car became inoperable on or around September 1, 2002.

Since Plaintiff was living with Defendants in September of 2002, he was put on notice when the car stopped functioning and Defendant Lynne Griever stopped using the vehicle. Soon after, Plaintiff chose to move to North Carolina. Plaintiff did not submit any evidence that he tried to have the vehicle repaired before he left Georgia nor did he attempt to remove the vehicle from the Griever's property prior to his move out of state. The Court finds that Plaintiff cannot recover the rental fees from September 1, 2002 until January 9, 2004 when Defendant Lynne Griever was no longer using the vehicle because it was inoperable. Plaintiff could have removed the vehicle from Defendants' premises at any time. Plaintiff contends that he attempted to retrieve the vehicle several times after he moved to North Carolina, but claims that Defendants refused to give him the keys to the vehicle. This argument fails however, because as the owner of the vehicle, he could have had the vehicle towed from the property. In fact, towing is the very method Plaintiff chose to remove the vehicle from Defendants' property in January, 2004.

Plaintiff could have employed a tow truck much sooner than 2004 to retrieve the vehicle or had new keys made for the vehicle by a locksmith. The Court finds, therefore, evidence to support a weekly rental agreement on the vehicle from November 1, 2001 until September 1, 2002.

D. Amounts Paid/Amounts Due

Defendant Lynne Griever claims that shortly after she received the Mercedes Benz vehicle, she spent hundreds of dollars repairing it. Plaintiff concedes Defendant Lynne Griever made significant repairs to the Mercedes Benz vehicle. Based on the evidence and testimony presented, the Court finds that Defendant Lynne Griever has fulfilled her obligation for the first \$800.00 (or first two months) of the vehicle rental debt through the combination of a \$200.00 payment and approximately \$600.00 in repairs to the vehicle. The remaining debt consists of Defendant Lynne Griever's rental of the Mercedes at a rate of \$100.00 per week from January 1, 2002 until September 1, 2002 (i.e. eight months). The Court finds that Defendants are liable to Plaintiff in the amount of \$3,200.00 for eight months in rental payments for use of the Mercedes Benz vehicle.

V. Damages / Tow fee

Evidence of damage and repair bills related to Plaintiff's vehicle was not admitted into evidence by the Court. Therefore, Plaintiff's request for damages to repair the Mercedes Benz vehicle is denied.

Since Plaintiff elected to have the vehicle towed from the property, Plaintiff is responsible for the towing cost in connection with the recovery of the vehicle. Thus, the Court denies Plaintiff's request for recovery of tow fees.

VI. Attorney's Fees

Attorney's fees are allowed in cases where the defendant has acted in bad faith or was stubbornly litigious. O.C.G.A. § 13-6-11 (2006). "A recovery for stubborn litigiousness . . . is authorized where the evidence reveals no bona fide controversy or dispute with regard to the defendant's liability." Toncee, Inc. v. Thomas, 219 Ga. App. 539, 542 (1995). "The determination of whether there is a bona fide controversy is for the trier of fact." Signsation, Inc. v. Harper, 218 Ga. App. 141, 144 (1995).

Here, the Court finds that there was a genuine dispute with regard to Defendants' liability. Plaintiff and Defendants agreed on very few facts surrounding the claims in this case. Defendants disputed how much of the loans they owed and also failed to agree with Plaintiff about the terms of the Mercedes Benz vehicle rental agreement. These disputes qualify as bona fide controversies, thus, the Court thus denies Plaintiff's request for attorney's fees.

VII. Interest

Plaintiff requests pre-judgment interest in the amount of 7 percent from the date of the demand letter on October 13, 2004 until the date of judgment and post-judgment interest at the legal rate.

Normally, if the parties agree in their contract what the damages for a breach shall be, they are said to be liquidated and, unless the agreement violates some principle of law, the parties are bound by the agreement. O.C.G.A. §13-6-7 (2006). Here there was no agreement for damages resulting from breach. However, the Court is authorized to increase the damages by the legal rate of interest in all cases where an amount ascertained would be the damages at the time of the breach. O.C.G.A. §13-6-13 (2006). The damages may be increased by the addition of legal interest from the time of breach until the time of recovery. Id.

Plaintiff requests the appropriate rate of interest of 7 percent per annum. "The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract." O.C.G.A. § 7-4-2 (2006). Here, the parties had no written agreement as to the interest rate on the loan agreement or the Mercedes Benz rental agreement. The court finds that 7 percent is the appropriate rate of interest for both the unpaid loans and unpaid Mercedes Benz weekly rental payments. The 7 percent interest rate applies to the total judgment amount of \$8,732.19 from the date of demand, October 13, 2004 until the date of trial, March 5, 2007 for a total of \$1,457.91 in pre-judgment interest.

Plaintiff also requests post-judgment interest. "All judgments in this state shall bear annual interest upon the principal amount recovered at a rate equal to [the published prime rate] on the day the judgment is entered plus 3 percent." O.C.G.A. §7-4-12(a) (2006). The court therefore orders post-judgment interest at the legal rate from the date of judgment.

VIII. Defendants' Counterclaims

A. Profits under the business agreement

As previously stated, Defendants' failed to satisfy their burden of proof that an enforceable business agreement existed. Therefore, Defendants' counterclaim for unjust enrichment fails.


B. Misappropriation of Intellectual Property

Defendant also failed to prove any misappropriation of intellectual property or any resulting damage. The only evidence presented was that an internet website was the Defendants' idea, and now Plaintiffs uses it. This evidence is not sufficient to show that Defendants' owned the website, or that Plaintiff, by his use, misappropriated the website. Even if Defendants' proved

that Plaintiff had in fact misappropriated the web site, no damages were introduced to support a claim of misappropriation of intellectual property.

Based on the foregoing, it is hereby ORDERED and ADJUDGED that judgment be entered in favor of Plaintiff and against Defendant in the above styled case in the amounts of \$5,532.19 for unpaid loans made by Plaintiff to Defendants; \$3,200.00 in weekly rental fees for the use of the Mercedes Benz vehicle from January 1, 2002 until September 1, 2002; \$1,457.91 in prejudgment interest; and post-judgment interest at the legal rate of interest provided by law.

SO ORDERED, this 15 day of September 2008.


KENT LAWRENCE, JUDGE
STATE COURT OF CLARKE COUNTY

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the within Order to:


(X) Attorney for Plaintiff by mail to:

**Cynthia E. Call
191 E. Broad Street, Ste 303
Athens GA 30601**

(X) Attorney for Defendant by mail to:

**J. Edward Allen
Fortson, Bentley & Griffin, P.A.
2500 Daniell's Bridge Road
Building 200, Suite 3A
Athens GA 30606**

This 17th day of September, 2008.



**Angie Waggoner
State Court of Clarke County**